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1/12/09

PTO/SB/61 (11-08)

Approved for use through 12/31/2008. OMB 0851-0031
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)		Docket Number (Optional) AT-98-343
First Named Inventor: <u>Scott A. Morgan</u>		Art Unit: <u>2654</u>
Application Number: <u>09/213.856</u>		Examiner: <u>Angela A. Armstrong</u>
Filed: <u>12/17/1998</u>		
Title: <div style="border: 1px solid black; padding: 5px;">Speech Command Input Recognition System for Interactive Computer Display with Interpretation of Ancillary Relevant Speech Query Terms Into Commands</div>		
Attention: Office of Petitions Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450		
<p style="text-align: center;">NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.</p> <p>The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.</p> <p style="text-align: center;">APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.</p> <p>NOTE: A grantable petition requires the following items:</p> <ul style="list-style-type: none">(1) Petition fee.(2) Reply and/or issue fee.(3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995, and for all design applications; and(4) Adequate showing of the cause of unavoidable delay. <p>1. Petition fee</p> <p><input type="checkbox"/> Small entity – fee \$ _____ (37 CFR 1.17(I)). Applicant claims small entity status. See 37 CFR 1.27.</p> <p><input checked="" type="checkbox"/> Other than small entity – fee \$ _____ (37 CFR 1.17(I)).</p> <p>2. Reply and/or fee</p> <p>A The reply and/or fee to the above-noted Office action in the form of <u>Terminal Disclaimer and Response</u> (identify the type of reply):</p> <p><input checked="" type="checkbox"/> has been filed previously on <u>October 6, 2004</u></p> <p><input type="checkbox"/> is enclosed herewith.</p> <p>B The issue fee of \$ _____</p> <p><input type="checkbox"/> has been filed previously on _____</p> <p><input type="checkbox"/> is enclosed herewith.</p>		

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This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

J. E. Kest
Signature
J. E. Kest, Attorney
Typed or printed name

12/24/2008

Date

19,226

Registration number, if applicable

Please address all correspondence to Matthew Baca, IPlaw Dept. IBM

(Matt Baca) 512-286-5196

Address

11400 Burnet Rd. Austin, TX 78758

Address

Telephone Number

Enclosure ☐ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unavoidable delay

☐

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is being:

☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date

Signature

Typed or printed name of person signing certificate

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

J. B. Kraft
Signature

12/24/2008

Date

J. B. Kraft
Typed or printed name

19,226

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

My statement in support is given on attached sheets.

/J.B. Kraft/ 12/24/2008

(Please attach additional sheets if additional space is needed.)

SN. 09/213,856
(Petition 37CFR1.137(a)
12/24/2008

PETITION FOR REVIVAL (37 CFR 1.137(a)
4. Showing of the cause of the Delay

The Notice of Abandonment herein mailed March 22, 2005, was incorrect and improper.

In the Appeal Decision herein, on September 22, 2004, the Final Rejection under 35 USC 103 was reversed.

In addition, there was a provisional Double Patenting rejection over copending Application SN 09/213,858 assigned to a common assignee which the Examiner and Applicant concurred was provisional until allowable subject matter was found in copending Application SN 09/213,858.

Applicants indicated in their Appeal Brief that they were prepared to file an appropriate Terminal Disclaimer in this Application as soon as allowable subject matter were found in copending Application SN 09/213,858.

The Decision on Appeal which reversed the 35 USC 103 rejection, stated that the provisional Double Patenting rejection was affirmed.

On October 6, 2004, being aware that allowable subject matter was indicated by the present Examiner in copending Application SN 09/213,858, (now US Patent 7,206,747) the Applicants filed a Response herein including an appropriate Terminal Disclaimer.

What the Examiner should have done, upon finding allowable claims in copending Application SN 09/213,858 would have been to reopen Ex parte prosecution in the present Application and finalize the provisional Double Patenting Rejection, and then either accept the Terminal Disclaimer already filed herein, or give Applicants an opportunity to respond to the final double patenting rejection.

There was no basis for the Examiner's Notice of Abandonment of March 22, 2005.

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Applicants have acted diligently in trying to have the U.S. Patent correct the present situation:

On April 7, 2005, Applicants filed a Formal Response to the Notice of Abandonment which included the above explanation which included a Status Inquiry.

Also on April 7, 2005, Applicants sent Examiner Angela A. Armstrong and her Supervisor Richemond Dorvil by facsimile a supplementary inquiry which requested the presently requested correction and relief.

This was followed up by the following telephone inquiries:

May 10, 2005, telephone message sent for Examiner Armstrong.

May 12, 2005 follow up message for the Examiner.

On May 20, 2005, the Office of the undersigned Attorney was advised by telephone that the Patent Office was issuing a Notice of Allowance in Copending Application SN 09/213,858, and the Abandonment Notice herein would be withdrawn so that Applicants given the opportunity to use their Terminal Disclaimer to avoid the now allowed claims in the copending Application. Attorney's Office was advised by Examiner that the above procedure would be completed by the first week in June, 2005.

On June 7, 2005 when nothing was forthcoming, a telephone message was left for Examiner Armstrong.

On July 21, 2005, a follow up message was left for Examiner.

On July 28, 2005, a follow up message was left for Examiner.

On August 18, 2005, a follow up message was left for Examiner.

Over the ensuing months, anticipating imminent correction on the part of the Patent Office, the Office of the Attorney did make several follow-up telephone inquiry calls with no significant results. These were not noted in our logs because there was nothing to report. However, after an inquiry by telephone by Attorney's Office, Examiner Armstrong, on June 1, 2006 indicated that the Notice of Allowance in Copending Application SN 09/213,858 should have mailed, and the Abandonment Notice herein would be withdrawn.

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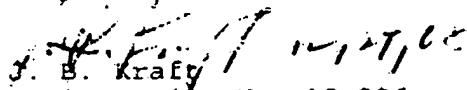
On June 15, 2006, a telephone inquiry was made with no results.

On July 16, 2006, the undersigned, J. B. Kraft was concerned about the delay in action in the U. S. Patent Office, and filed a Petition to the Director of the USPTO Under 37 CFR 1.181 requesting the withdrawal of the Notice of Abandonment, and allowance of the present Application. (A copy of the Petition including a certificate of mailing by J. B. Kraft is attached hereto as Exhibit "A".) Recent telephone inquiries made to USPTO about the July 16, 2006 Petition have indicated that the USPTO can not locate the Petition.

Applicants believe that they have brought this situation to the attention of Examiner immediately after its discovery, and had assurances from Examiner that appropriate action would be taken by the Patent Office with no significant results. Applicants believe that they have done everything possible to try to resolve the present problem.

Accordingly, the Patent Office is respectfully requested to withdraw the Abandonment of this Application, enter the Terminal Disclaimer submitted on October 6, 2005, and allow claims 1-3, 5-8, 10-13, and 15.

Respectfully submitted,


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Attorney for Applicants
(512) 567-4732